

REMARKS

Prior to the instant response, claims 35, 40-41, 54-55, 64, 66, and 73-80 were pending in the application. By amendment herein, claim 35 has been amended. No claims have been added or cancelled. Thus, claims 35, 40-41, 54-55, 64, 66, and 73-80 remain pending.

I. Claim Rejections Under 35 U.S.C. 103

In the Office Action of November 6, 2009, the Examiner rejected the pending claims as being unpatentable over Eggensperger et al., i.e., U.S. Patent No. 5,276,047 ("D1"), in view of Ofusu-Asante et al., i.e., U.S. Patent No. 6,387,856 ("D2"). For the reasons below, the claims exclude the presence of BIT, and thus are patentable over D1.

Independent claim 35 has been amended to recite that "the solution is non-dangerous in accordance with European Dangerous Preparations Directive (99/45/EC) and Dangerous Substances Directive (67/548/EEC)." Support for this amendment may be found at PARA. 0030 of the published application.

As previously shown, the central focus of D1 is the use of BIT. *See*, pages 8-9 of the October 2, 2009, Amendment and Response. Since BIT is listed as dangerous per the EU regulations, one of ordinary skill in the art would not have used the solution of D1 as a basis for creating the presently claimed non-dangerous cleaning solution.

As shown in Appendix A, page 6, under the claimed EU regulations, the chemical compound BIT (i.e., 1,2-benzisothiazolin-3-one; CAS No. 2634-33-5) has been categorized as "Dangerous for the environment" (emphasis added). The "EC Safety Classification" for BIT is: "S24, S26, S37/S39, S61". Per pages 8-10 of Appendix A, these safety codes are defined as:

- S24 - Avoid contact with skin
- S26 - In case of contact with eyes, rinse immediately with plenty of water and seek medical advice
- S37/S39 - Wear suitable protective clothing and eye/face protection
- S61 - Avoid release to the environment. Refer to special instructions /Safety data sheets

As shown on page 6 of Appendix A, BIT is also potentially a problem for "Reproduction / development effects", and is listed as "harmful" and as an "irritant".

Based on the "danger" to the environment, the "harmful" or "irritant" affect to humans, and the potential "[r]eproduction / development effects" of BIT, one of ordinary skill in the art would not consider the BIT-containing solution of D1 an acceptable starting point for making a "non-dangerous" cleaning solution, as presently claimed. Therefore, the pending claims are patentable over D1.

IV. Conclusion

Having responded to all rejections set forth in the outstanding Office Action, it is submitted that all pending claims are in condition for allowance, and notice to that effect is respectfully solicited.

Respectfully submitted,



Heath J. Briggs
Reg. No. 54,919
GREENBERG TRAURIG
Greenberg Traurig, LLP
1200 17th Street, Suite 2400
Denver, CO 80202
303-685-7418
E-mail: briggsh@gtlaw.com

Date: December 9, 2010